
Michigan Commission on Law Enforcement Standards
Public Hearing on Regular Employment
January 11, 2007
Kirtland M-TEC Center
Gaylord, Michigan

MCOLES MEMBERS PRESENT:

Chief Kurt Jones, representing the Michigan Association of Chiefs of Police
Sheriff Robert Pickell, representing the Michigan Sheriffs' Association
Sheriff James Bosscher, representing the Michigan Sheriffs' Association
Mr. Raymond Beach, Executive Director
Mr. Tom Furtaw, Commission Counsel

COMMISSION STAFF PRESENT:

Mr. Dale Rothenberger Ms. Cheryl Hartwell
Mr. David King

GUESTS (completing cards):

Undersheriff Daniel S. Bean, Antrim County Sheriff's Office
Director Jerry Boerema, Kirtland Department of Public Safety
Chief Robert Clark, Central Lake Police Department
Chief Brian Hill, Gerrish Township Police Department
Chief Rod Jaskowski, Port Sanilac Police Department
Officer Robert Mead, Suttons Bay Police Department
Deputy Chief Kim Miller, Alpena Police Department
Chief Del Moore, Suttons Bay Police Department
Chief Karl Schreiner, Grayling Police Department
Administrative Assistant Karen Thomas, Antrim County Sheriff's Office
Chief Ronald E. Trepkowski, Saginaw Valley State University Police Department
Chief Patrick C. Wyman, Mackinaw City Police Department

INTRODUCTIONS:

The Public Hearing on Regular Employment began at 10 am. Mr. Beach introduced the committee members. He thanked everyone in attendance for taking time from their busy schedules to attend the hearing. Mr. Beach explained the format that would be followed for the hearing and encouraged everyone to provide testimony relative to their use or concerns associated with establishing a definition for regular employment.

LEGAL CONSIDERATIONS:

Mr. Tom Furtaw explained that the issue of regular employment has been in existence for some time. There has been some debate over the scope of regular employment and what is the legal definition. He explained that the purpose of his presentation is to provide a background of the legal issues surrounding regular employment. Mr. Furtaw explained that it is key to keep in mind when we speak about compliance; the law provides MCOLES, as a public body, with some flexibility in defining what constitutes regular employment as a law enforcement officer in Michigan. As it stands right now, there is no definition of regular employment in the Michigan statute relative to law enforcement. Mr. Furtaw explained that he was surprised at the lack of a clear definition when he joined the Commission. He further explained that he then began to look at some of the statistics where, in some cases there are officers who are licensed, and recognized as regularly employed, but are working less than 40 hours per year for example.

Mr. Furtaw began his formal presentation by looking at where the language “regular employment” comes from. Public Act 203 of 1965, as amended, defines who a police officer is and what entities are law enforcement agencies. In Section 2, the Act defines a law enforcement officer as “a regularly employed member of a law enforcement agency authorized and established pursuant to law.” What does this mean? MCOLES licenses individuals who meet the statutory definition of a police officer. MCOLES has authority and is required by law to set certain standards regarding who qualifies. MCOLES doesn’t determine what a law enforcement agency is, that is done by independent authority. MCOLES looks at individuals who are employed by a recognized law enforcement agency to determine whether or not they meet state standards. Some of these standards are obvious and easy to understand such as the physical requirements, academic requirements, etc., but the question remains of what regularly employed means. The words appear in the statute, but are not clearly defined.

Over the years, the courts have gone back and forth and the Attorney General has issued opinions on who qualifies as a peace officer. Some of the issues have been the authority of an auxiliary officer, reserve officers, DNR agent, or a motor carrier officer? MCOLES sets standards for selection, employment, licensing, revocation and provides funding for the training of law enforcement officers in the state. MCOLES then issues licenses to those individuals who qualify as law enforcement officers in Michigan. There is nothing in the law that requires or compels MCOLES to license an individual. An independent judgment is made on each individual. A key point under Public Act 203 is if an officer from a law enforcement agency separates employment, whatever the reason, and they have been employed by a law enforcement agency for less than one year, they remain eligible to return to law enforcement employment for a period of one year. The statute also recognizes additional years of experience and provides for an increased amount of

time, up to two years, that a license of a law enforcement officer will remain active and allow the officer to return to work without having to meet any additional requirements. This is an important point because the legislature is identifying that service or years of experience count. Mr. Furtaw stated that he doesn't think however, that what was contemplated here was that an individual qualifies as working one to five years because they worked three weeks in year one, and three days in year two. From the legal perspective that doesn't make sense, however, it is clear that work experience counts and the term regularly employed counts; it has meaning.

Mr. Furtaw stated that he looked to other areas of the law to provide assistance in determining what the term regularly employed means. He stated that the federal Fair Labor Standards Act (FLSA) requires overtime and minimum wage for individuals who are employed. This is federal law and states can not trump the FLSA. The question of who qualifies for overtime and minimum wage is addressed in the Code of Federal Regulation that speaks to an exemption for overtime where the employment is only occasional or sporadic.

Under the Workman's Compensation law compensation is required for regular employment. One view is to be employed full time for 13 weeks per year. There is also a case that is referenced in one of the Attorney General Opinions that looks at whether or not there is a pattern or course of conduct. Mr. Furtaw also spoke about researching if and when a substitute teacher is considered regularly employed. The courts look at a daily per diem. Are they casual and temporary? Are they on call? Are they free to decline work or work for other employers? If the answer to any of these questions is no, then it is going to gravitate towards them being recognized as regularly employed.

Mr. Furtaw explained that there have been four Attorney General Opinions that talk about Public Act 203 (the MCOLES Act) and the term regular employment that has existed in the MCOLES definition for a number of years and was looked at in the following Attorney General Opinions:

Attorney General Opinion No. 4792 (1973) - The issue raised was, are constables exempt from the Carrying a Concealed Weapon (CCW) requirements?

Historically, constables have been defined as peace officers. The question arose as to whether or not they were exempt from the CCW requirements? Police officers do not have to apply for a CCW permit. Attorney General Frank Kelly opined that only peace officers who were regularly employed and paid by an agency qualify as exempt from a CCW requirement. This opinion also defined the work load. The work must be substantial rather than occasional and would constitute a large part of the officer's daily activity. This is in the context of a CCW permit and is interpreting MCL 28.602.

Attorney General Opinion No. 5265 (1978) This issue dealt with sheriff posses or members of a police auxiliary and whether or not they are subject to MCOLES training requirements.

The Attorney General referred to these individuals as emergency peace officers under a special exception in the statute, where, in emergency circumstances, a police chief or sheriff can engage individuals who otherwise are not regularly employed for purposes of dealing with an emergency situation. The opinion stated that while the language in the statute says temporarily engaged, these officers would be subject to the MCOLES requirements if they are regularly employed. This opinion also refers to a pattern of conduct where employment is concerned, meaning something not merely occasional or incidental. The opinion also said that temporarily engaged means irregular or ad hoc and would therefore not be subject to the MCOLES requirements.

Attorney General Opinion No. 5806 (1980) - The issue dealt with reserve police officers and whether or not they were CCW exempt.

Again, Attorney General Frank Kelly said that these individuals must be regularly employed which means substantial rather than merely occasionally working. Opinion 5806 left the decision of regular employment to the 83 county gun boards. The opinion is saying that there is legal issue that is driven by a factual inquiry. The factual question will be settled by a county gun board.

Attorney General Opinion No. 7098 (2002) Attorney General Jennifer Granholm undertook a question regarding reserve and regular police officer exemption to the CCW requirements.

The Attorney General couched this issue with the same basic analysis: Does the officer perform substantial work that constitutes a large part of the officer's daily activity. If so, then they could be found to be regularly employed and exempt. The county gun boards will once again decide this question.

Mr. Furtaw explained that there is an issue that is being raised with these opinions. MCOLES is getting questions that have legal ramifications about what constitutes regular employment. What the Attorney General Opinions are telling us is that regular employment means substantial work, something greater than sporadic or infrequent. The bottom line is that regular employment is recognized in law. MCOLES, as a state agency, is a licensing body and is bound by Attorney General Opinions that don't directly address the question, but clearly state that regular employment is recognized in law as meaning something more than casual or infrequent.

Ultimately, in Mr. Furtaw's opinion, the courts will define regular employment if law enforcement doesn't. Sooner or later there is going to be litigation either as a result of an

incident where someone is injured during an arrest or there is a jurisdictional issue raised, or a union gets involved and has an issue. Sooner or later the question of what constitutes regular employment will get into the courts. The law currently provides a great deal of flexibility and it would be preferable that law enforcement define regular employment, as apposed to a judge that will suit law enforcement needs. MCOLES specifically needs a policy to address the requirements to define regular employment.

As it stands right now, absent a definition, MCOLES is being compelled to recognize individuals that, as a matter of common sense, clearly fall outside the rational definition of regularly employed. Mr. Furtaw explained that he would be hard pressed to defend a license in a case where a jurisdictional question or an injury during an arrest had occurred and to carry the freight in front of a circuit judge claiming that MCOLES pretty much recognizes anyone as long as they are carried on a law enforcement roster. The judge's first question would be "don't you take some due diligence to ensure that they are regularly employed?" So, as a licensing body, MCOLES is being forced to deal with this issue. But the key is that we currently have a lot of flexibility to craft a definition that is going to be workable for law enforcement policy across the state and will get us through the courts in the event of litigation.

COMMENTS ON SURVEY RESPONSES:

Sheriff Pickell explained that Chiefs and Sheriffs across the state responded to the MCOLES survey with respect to the regular employment issue in a substantial way. To date, MCOLES has experienced about a 75% response rate.

Mr. Beach explained that one of the hallmarks of the Commission carrying out their responsibilities has always been that MCOLES values taking issues out to the field. MCOLES has definitely benefited by the input received that has allowed us over the last eight years to tackle some pretty monumental issues. Mr. Beach further stated that he is extremely happy with the response rate and results of the survey. The calls incidental to the survey that he has received as well as the discussions at various meetings that he has attended have all been very positive. Law enforcement sees the Commission attacking this issue more from a proactive standpoint.

As Mr. Furtaw indicated, MCOLES feels much better about dealing with this issue with the assistance of the people that we serve verses having the courts dictate us. This was clearly evident to MCOLES in 2002 with some serious dialogue with Attorney General Granholm's office. She, through her legal counsel, was very specific to the Commission that this was an issue that needed to be resolved. It was very difficult for her as she looked at issuing an opinion in this area given the rich history that this issue has had.

Prior Commission's have tried to tackle this issue and as some of the participants in the hearing today remember the last try in the late 80's to resolve this issue. There was a debate that resulted, which was quickly stopped, and the issue was placed back on the shelf. Mr. Beach reiterated his appreciation for the replies to the survey by law enforcement agencies and staff hopes to be able to, within the next three weeks, do a complete analysis of the information provided in the survey. The analysis will be shared during the last public hearing on this issue which will be in conjunction with the Michigan Association of Chiefs of Police (MACP) conference on January 31, 2007. With the public outing of the final analysis of the survey, staff will also then mail the results to all law enforcement agencies. Mr. Beach explained that when this issue was looked at a number of years ago, the Commission did not know the extent to which part time law enforcement officers were being used or any of the issues related to part time law enforcement officer employment. Mr. Beach then asked Mr. David King to make comments relative to what the Commission has seen and heard from the surveys, with respect to the use of part time law enforcement officers, from which some conclusions can be drawn.

Mr. David King provided the participants with a handout that gave an overview of the survey information that has been received to date. He explained that one of the interesting points that the survey responses indicate is that among the employers of part time law enforcement officers, better than 57% of the responses indicated that there is an increasing dependency on the use of part time law enforcement officers to provide services. The survey also posed the question of whether or not there should be some type of minimum requirements for part time officers. Among the agencies who employ part time officers, 79% of the survey responses indicated that there should be some type of minimum requirements; and among those agencies who do not employ part time officers, the response rate for minimum requirements was 89%. Mr. King explained that the numbers in the survey are currently fluid as surveys continue to be received by staff on a daily basis. He stated that the following changes should be noted on the second page of the hearing handout to bring the survey statistics current with surveys received to date:

- 343 agencies employ part time law enforcement officers instead of 337
- 21,609 law enforcement positions as of January 5, 2007 instead of 21,621
- MCOLES is currently aware of 1,636 part time law enforcement positions in Michigan

Mr. King explained that the summary in the handout provides a starting point of what we know regarding part time law enforcement employment. He asked that those present provide testimony as to their specific use/non use or concerns regarding part time law enforcement officer employment.

PUBLIC TESTIMONY:

Suttons Bay Police Department – Chief Del Moore – All officers working for the Suttons Bay Police Department are retired officers with over 25 years of experience. The department currently employs 2 full time officers and 2 part time officers. One officer works approximately ½ to ¾ time and the other officers works 1 to 2 days a month. Pay for our officers averages between \$20 to \$25 per hour, that is from part time to full time. The part time officers do not receive benefits.

Chief Moore stated that Suttons Bay hosts a total of 8 separate festivals during the summertime. During those periods of time the community swells just like any other northern Michigan community. The community is extremely tourist oriented and without some part time availability, the department could not provide the necessary law enforcement to the community. The sheriff's department in Leelanau county is not a large department. Chief Moore thinks there may be less than 15 road patrol officers, give or take one or two positions.

Central Lake Police Department – Chief Bob Clark – Chief Clark stated that the department employs 1 part time position that is paid \$13.25 per hour and works 32 hours per week. Central Lake is looking to bring on an additional part time officer that would work approximately 16 hours per week.

Chief Clark explained that he came to Michigan from Wisconsin where he served as a law enforcement officer for nine years. He completed the waiver of training process and was hired in a supervisory position by a tribal police agency and stayed for 3 years. Chief Clark took part time employment in a small town to activate his MCOLES license as there was no agreement between the tribal agency and the sheriff's department in that county. He worked 5 to 10 hours per month in the part time position. Chief Clark was then hired by Central Lake Police Department and then left the tribal agency. Chief Clark stated that his part time employment, even with his previous experience as a law enforcement officer in Wisconsin was challenging. He had a self imposed Field Training Officer program at Central Lake. He stated that the waiver of training program is great as it gives an officer the basics, but it is predisposed on the idea that individuals are going to an agency that is going to hire you and bring you up to standard for Michigan law. Had he not had the previous experience when he came to Michigan, it would have been starting all over again and that is after three years of being a licensed MCOLES officer. So it didn't do him any favors working such minimal hours in Walkerville.

Chief Clark stated that he is in support of some minimum standards and minimum hours to be worked.

Gerrish Township Police Department – Chief Brian Hill – Chief Hill explained that the department from 1982 to the mid 90's had a lot of part time employment. Part time officers were paid approximately \$2.00 per hour less than the full time officers with no benefits.

Currently, the department does not employ any part time law enforcement officers. The reason for the switch from part time employment to all full time employment was because the department noticed there was a huge deficiency in ability to perform the job as a full time officer does. Most of the part time officers averaged 16-20 hours per week, which was nearly a one-half time situation. With the ever changing climate in law enforcement, trying to keep all the officers trained was very difficult due to their regular employment elsewhere. So the department stopped employing part time law enforcement officers. The department wanted to move to a more professionally trained department.

Chief Hill stated that he also understands the need for part time law enforcement officers by communities experiencing financial difficulties but wants to provide law enforcement coverage. However, he further stated that based upon his department's experience, 16 hours a week was not nearly enough time to keep some of the officers proficient. Training is extremely important and so is work experience. Law enforcement is a profession that if you are not working in it everyday, you lose it.

QUESTIONS, COMMENTS, AND CONCERNS:

Mr. King stated that we know that hours worked is not a perfect measure or tool, but it seems to be the pragmatic or practical way to look at this issue. He asked the audience what issues, from an agency perspective, would an MCOLES standard based on hours worked pose and would such a standard be a useful requirement for purposes of maintaining a law enforcement license?

Mackinaw City Police Department – Chief Pat Wyman – Chief Wyman stated that his department employs 2 part time officers that work approximately 800 to 1,000 hours per year. He stated depending upon what level of hours is required by MCOLES, his department may or may not have a problem. The part time officers are seasonal and also used for backfill. These officers are paid \$12.50 per hour with no benefits. Full time officers are paid \$19.42 per hour with benefits.

Mr. King asked the audience that if MCOLES came up with an annual number of hours that must be worked, at what point does that become a problem?

Central Lake Police Department – Chief Clark stated that this can be a double edged sword. He is in support of imposing some level of minimum hours. However, some agencies may cut officers as they won't be able to sustain a certain amount of hours. On the other hand, it may force the political entity to put the money up or not have the public safety department. You will force their hand to do one thing or the other. However, you also have to take into consideration, what is safer for the public, that officer, or a fellow officer? Would you rather work with three guys that know what they are doing or five guys that have no clue? Chief Clark stated that he thinks it will work either way, but it

will be up to each political subdivision what they do if the standard comes into effect. Chief Clark stated that while you may lose a few people, you may end up with a more professional force.

Chief Clark further stated that based upon his experience, if an officer did not have any background in law enforcement and was hired as a part time officer with no one to provide a Field Training Officer program, that part time officer becomes a liability. He further stated that in addition to a minimum number of hours, training is critical.

Mr. Beach explained that MCOLES staff has looked at what other states are doing in this area and one common thread is some sort of in-service training requirement. He further stated that 38 states currently have this type of requirement. Mr. Beach explained that what the panel has been hearing to date from these hearings is that maybe the requirement needs to be some sort of combination of minimum number of hours and an in-service training component. However, this requirement could not just be imposed on part time officers, it would have to be applicable to full time officers as well.

Chief Clark explained that he also had some reserve employees that were employed by other departments. While they don't work a lot for Central Lake, he tries to provide them with as many training opportunities as he can as he views it as positive not only for his agency but the county as well as some of these people work for the sheriff's department. These officers would have more training time than road time with Central Lake. Chief Clark stated that in his opinion, it is more valuable to have an officer that has more training than one that just rides along all the time and not trained.

Sheriff Pickell asked if there were any agencies in attendance that employ seasonal people on a part time basis?

Antrim County Sheriff's Office – Undersheriff Dan Bean stated that the department employs seasonal people. The department has one part time officer who also works for Central Lake, that works in the marine and snowmobile patrol. The rest of the seasonal people are not licensed MCOLES officers. There are two other part time people, one retired individual works in the court and does paper service for the department. Another gentleman retired in December of 2006 and will be back in February to work in the courts and paper service. These are both licensed MCOLES officers hired as part time people.

Undersheriff Bean stated that he thinks that the number of hours has to be addressed and he agrees with Chief Clark that it has to be more than 8 hours a month. He further stated that 8 hours a month does no justice for anyone. Undersheriff Bean agreed that there has to be some kind of standard, but he is not sure what that should be. He also thinks that training is a critical component. Undersheriff Bean stated that their marine and

snowmobile officers are not licensed and the Sheriff does not believe that they need to be licensed in order to do the job.

Gerrish Township Police Department – Chief Brian Hill stated that the switch from utilizing part time officers to only employing full time officers was the best decision his department ever made. He feels strongly that a standard needs to be set. He further stated that some agencies may be able to use the standard, whatever it ends up being, to take to their respective boards and councils to force a decision as to exactly what are they willing to pay for as far as law enforcement coverage for their communities is concerned. He feels that anything less than 1,040 hours and training would be a challenge and a mistake. He feels that the minimum should be no less than one-half time.

Suttons Bay Police Department – Chief Del Moore stated that if the Commission looks at a minimum number of hours to work, he still has concerns depending upon the type of officer. He stated that if the officer has experience then less training should be required, but if the individual is fresh out of the academy with little or no experience, then more training should be required.

Mr. Beach explained that Public Act 203 does recognize experience in section nine of the Act that outlines an officer's employment separation requirements to maintain an MCOLES license.

The question of whether or not MCOLES would be looking at work assignments arose. Mr. Beach explained that MCOLES has never taken the position to challenge an agency head regarding work assignment. If an agency head says that an officer has full law enforcement authority, the assignment of that officer is left to the agency head to determine.

Port Sanilac Police Department – Chief Jaskowski stated that his department employs 7 part time officers and 1 full time officer. The part time officers work from 30 to 1,500 hours per year. They are paid \$13.00 per hour with no benefits. He further stated that his part time officers, when newly hired, do not go out on the road alone until he is sure that they have been properly trained and are ready. All officers receive the same training.

Chief Jaskowski expressed his concern regarding setting requirements only based upon hours worked as he also feels that training is a critical component. He also expressed concern that if a standard is set that is not reasonable, are we cutting the throats of the academy graduates? He tries to help the academy graduates. If the requirement is set too high, his city council will not be able to fund the police coverage as the budget is very tight. Chief Jaskowski stated that training is more important than a minimum number of hours.

Antrim County Sheriff's Office – Undersheriff Bean asked the panel how MCOLES would account for an officer that works part time at multiple agencies. Or how an officer was accounted for that worked full time at one agency and part time at another agency?

Mr. Beach explained that with the change in Public Act 203 in 1998, MCOLES has the responsibility of tracking Michigan law enforcement officers, so this information is available. He further explained that there are officers who work at multiple agencies in excess of 3,000 hours per year, however, these officers would not be negatively impacted by a regular employment standard as they are working hours in excess of a full time position.

Central Lake Police Department – Chief Clark asked about the possibility of a graduated license system that would provide for different levels of requirements for different types of law enforcement positions. For example a seasonal officer would need to work X number of hours with X hours of training, part time officers another number of hours and training, and full time officers still another number of hours and training.

Mr. Beach explained that MCOLES had looked into the possibility of graduated licensing requirements, however, current legislation does not provide MCOLES with the authority to establish graduated licensing requirements.

Sheriff Pickell thanked all in attendance for taking time from their busy schedules to attend the hearing and share their valuable input with the panel.

The Public Hearing on Regular Employment concluded at 11:34 am.